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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1251

BORIS THOMAS,
Petitioner,
v.
FORD MOTOR COMPANY, a Delaware Corporation, and INTERNATIONAL UNION, UAW, a labor organization, and LOCAL 600, UAW, a labor organization,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT UNIONS IN OPPOSITION

QUESTION PRESENTED FOR REVIEW

When the District Court had plaintiff's evidence before it, and when defendants had submitted an Affidavit and other material, was it proper for the Court of Appeals to affirm the District Court's Order granting defendants' motions for summary judgment pursuant to Rule 56, FRCP?

STATEMENT OF THE CASE

Petitioner's[1] statement omits relevant facts and proceedings and includes certain erroneous facts and legal conclusions.

The correct facts and proceedings are generally as stated by the District Court (A .15-.18, .24-.26, .30)[2] and by the Court of Appeals (A .1-.6, .8, .11-.14). The Unions shall emphasize certain facts and proceedings which were omitted or misstated by Petitioner.

Plaintiff, by his counsel, in Civil Action No. 39879, sued Ford for breach of collective bargaining agreement and sued the Unions for alleged unfair representation (A 1.7, .18). Subsequently, in Civil Action No. 40129, plaintiff sued said defendants for alleged civil rights violations and for the Union's alleged breach of duty of fair representation (A .18, .23).

Petitioner is white (A .13, .30). He complained about discrimination against black employees (*Ibid*).

Plaintiff, by his counsel, admitted in District Court that the crux of both of his Complaints was that said local Agreements violated the Ford-UAW Master Agreement. The lower Court also concluded that the alleged Contract violation was the basis of *both* complaints (A .13).

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[1] Petitioner will hereinafter usually be referred to as "Thomas" or as "plaintiff." Respondent International Union, UAW, will usually be referred to as the "International" or the "UAW;" Respondent Local 600 will usually be referred to as "Local 600" or as the "Local." Said Respondents may be referred to jointly as the "Union" or "Unions." Respondent Ford Motor Company will hereinafter usually be referred to as "Ford" or the "Company."

[2] Citations to Petitioner's Appendix will be in parenthesis, as "(A .—)." Citations to Respondent Union's Appendix will be in parenthesis, as "(B .—)."

Ford filed Answers and Affirmative Defenses, which attached the December 7, 1970 Master Agreement (A .3; A.); later Ford filed its Motion to Dismiss (A .3; A .16).

The Unions filed Motions to Dismiss and Briefs (A .3; .16). The Union's Motion was partly based upon an Affidavit and attachments (A .3, .16).

After the Union's Motion was filed, plaintiff's attorney filed a notice of taking the deposition of persons, including Local Union members (A .14). Counsel for plaintiff and the Unions agreed that the depositions would not be taken and that any "discovery would wait until the judge rules on our motions to dismiss the above cases." (A .4, .5).

Plaintiff, by his attorney, filed Briefs and Answers to defendants' Motions (A .3). Neither plaintiff nor his attorney filed any affidavit or other sworn material in response to the Union's Affidavit and material (A .3). Plaintiff's Answers almost entirely were legal conclusions denying defendants' defenses.

On June 25, 1973, there was a hearing on said Motions before District Judge Feikens. During the argument, plaintiff's counsel informally urged that his complaint stated a cause of action and suggested that discovery would be appropriate (A .5). After argument by counsel for all parties, the matter was adjourned so plaintiff's lawyer could examine records supporting Ford's defenses (A .5).

A subsequent District Court hearing was held on August 13, 1973 (A .4; B .3-.5). Plaintiff's counsel began that hearing by stating that he had nothing further to present to the Court on the Title VII action (B .4).

On November 1, 1973, Disrict Judge Feikens held a recorded conference in his Chambers (A .14). The Judge advised counsel for all parties that he intended to treat

defendants' Motions to Dismiss as Motions for Summary Judgment, pursuant to Rule 56, FRCP (A .4; B .6). The Judge asked counsel for all parties if they had any additional material to submit, prior to the Judge's ruling upon the Motions (A .4; B .5). Plaintiff's lawyer twice stated that plaintiff had "nothing else" to submit to the Court (A .4; B .5, .6). He did not request discovery or ask that the Court not yet decide the case (A .6).

On November 7, 1973, the District Judge issued his Memorandum Opinion granting defendants' Motions on some of the grounds raised (A .15-.33).

Plaintiff appealed to the Court of Appeals for the Sixth Circuit. The Court of Appeals affirmed the District Court's grant of defendants' Motions for Summary Judgment.

Essentially, here, as in the Court of Appeals, plaintiff asserts that the District Judge erred by granting summary judgment for defendants, allegedly without allowing plaintiff an opportunity to get and submit evidence and without a trial.

ARGUMENT

THE DECISION BELOW IS CORRECT; IT IS IN ACCORD WITH DECISIONS OF THIS COURT AND DECISIONS OF OTHER COURTS OF APPEALS; AND THE DECISION BELOW PRESENTS NO IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN SETTLED BY THIS COURT.

The lower Courts' opinions were correct and were consistent with the Federal Rules and with decisions of this Court and of other Courts of Appeals.

No important Federal civil rights or labor question is presented by this Petition.

In order to invoke this Court's jurisdiction, Petitioner argues that the lower court decisions conflict with this Court's decision in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974). Petitioner contends that *Gardner-Denver* requires a Federal Court trial in civil rights cases and precludes summary judgment in such cases.

Petitioner is wrong. *Gardner-Denver* does not support Petitioner's views. The decisions below do not conflict with *Gardner-Denver*. This Court held, in *Gardner-Denver*, that a contract arbitration award does not bar a Federal Court's consideration of claims under Title VII of the 1964 Civil Rights Act. Plaintiff here had such consideration by the District Court.

The District Court, though referring to a decision by the independent Public Review Board[3] and other material, clearly did not feel bound by any prior decision (A .19, .20-.33). Nor did the District Court merely judicially review any prior decisions. It is clear that the District Court directly considered all of the pleadings, the Affidavit and all other materials which the parties presented and desired to present. Judge Feikens' lengthy opinion shows how carefully he considered the case for himself, and concluded for himself that there was not sufficient evidence on which to base a claim of racial discrimination (A .28-.33). This met the *Gardner-Denver* requirement of *de novo* consideration (415 U.S. at 60).

Contrary to Petitioner's argument, *Gardner-Denver* did not nullify the use of summary judgments under Rule 56, FRCP.

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[3] The Public Review Board decision was admitted into evidence, when it was attached to the Unions' Affidavit (A .3; .17). In *Gardner-Denver, supra*, this Court expressly stated that even an arbitration decision may be admitted into evidence and accorded such weight as is appropriate (415 U.S. at 60).

In other post-*Gardner-Denver* civil rights cases, Courts of Appeals have affirmed dismissal of complaints without a trial.[4] Petitioner has cited no Court of Appeals decision which might conflict with the decisions of the lower Courts.

While Petitioner does not show how it justifies this Court's consideration, he argues that the lower Court granted summary judgment without affording Petitioner an "opportunity to adduce proofs."[5] The record does not support Petitioner in that regard.

Plaintiff's lawyer agreed with the undersigned counsel that there should be no discovery until after the Judge ruled on defendants' motions (A .4, .5). This was done because, if the motions were granted, discovery would have been a waste of time.

Furthermore, District Judge Feikens was extraordinarily careful to give plaintiff and his lawyer every opportunity to submit more material.

The first hearing on defendants' motions was adjourned so plaintiff's lawyer could verify the information relied upon by Ford and to give plaintiff's lawyer an opportunity to present additional evidence or argument (B .4). Ford's counsel gave plaintiff's counsel additional material (A .5).

At the second hearing, plaintiff's counsel stated: "At this time, I have nothing additional to present to the Court on the Title VII action . . ." (B .4).

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[4] See, for example, *Bellamy v. Mason's Stores, Inc.*, 508 F. 2d 504, 505 (4th Cir. 1974); *Baker v. California Land Title Co.*, 507 F. 2d 895 (9th Cir. 1974); *Guerra v. Manchester Terminal Corp.*, 498 F. 2d 641, 646, 647 (5th Cir. 1974); *Patmon v. Van Dorn Co.*, 498 F. 2d 544, 545 (6th Cir. 1974); and *Williams v. General Foods Corp.*, 492 F. 2d 399, 405 (7th Cir. 1974), affirming dismissal as to Union defendants.

[5] This issue was raised for the first time on appeal to the Court of Appeals. For that reason alone, it should not be considered by this Court.

The District Judge, prior to the close of the second hearing asked plaintiff's counsel if plaintiff was satisfied with his responses to defendants' motions. Plaintiff's counsel replied that the answers which he filed were sufficient along with the exhibits in the case (A .6; B .4).

At a conference in Chambers, on November 1, 1973, plaintiff's counsel was advised that the Judge would treat defendants' motions to dismiss as for summary judgment, and plaintiff's counsel was again asked if he had further material to submit (A .6; B .5). Plaintiff's counsel twice indicated that "We have nothing else . . ." (B .5, .6).

Certainly, the record does not demonstrate unfairness to plaintiff nor an issue of sufficient importance to justify this Court's considering procedural arguments, which were rejected by the Court of Appeals (A .3-.6, .10, .13, .14).

Though Petitioner refers to himself as a representative of a class in his Statement of the Case, he did not appeal from the District Court's dismissal of the class action part of his complaint (A .9, .31, .32); and he does not here assert that dismissal as a reason for granting his Petition.

Petitioner does not contend that the substantive issues justify this Court's considering this case.[6] Consequently,

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[6] Plaintiff's Court of Appeals Brief did not assert that the District Judge erred by finding, on the materials presented, that Ford did not violate the Master Agreement and that the Unions did not unfairly represent plaintiff. In his Petition, plaintiff merely suggests that Ford breached its Master Agreement with the UAW by laying off others (p. 7). No *facts* are presented to support that conclusion. Plaintiff agreed below that the crux of both of his suits was his view that three local seniority Agreements violated the Ford-UAW Master Agreement (A .3). This Court holds that the discretion of Unions is especially great in the negotiation and administration of agreements concerning seniority. *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953); and *Humphrey v. Moore*, 375 U.S. 335, 349, 350 (1964).

Respondents will not discuss the merits of the substantive issues.

We do emphasize that the District Judge *independently* and thoroughly considered and rejected plaintiff's charges of unfair representation (A .22-.24), and plaintiff's contractual arguments (A .24-.28).

The District Court considered the applicable Master and local Agreements as well as an Affidavit and other material. Plaintiff filed no contra material other than conclusionary denials of defendants' defenses. Under such circumstances, Rule 56(e) mandated summary judgment for defendants (B .1, .2).

Based upon the record in this case, the Unions submit that the Court of Appeals correctly held that the District Court properly granted defendants' Motions for Summary Judgment under Rule 56(b), (c) and (e), FRCP.

CONCLUSION

For the foregoing reasons, the Union Respondents submit that the writ should not issue; said Respondents also request costs pursuant to Rule 57 of this Court's Rules.

Respectfully submitted,

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Jordan Rossen, Associate General Counsel
By: /s/ Jordan Rossen
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Dated: April 25, 1975

APPENDIX OF RESPONDENT UNIONS IN OPPOSITION

PORTIONS OF RULE 56, FEDERAL RULES OF CIVIL PROCEDURE

Rule 56. Summary Judgment

• • •

(b) FOR DEFENDING PARTY. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory of character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

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(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirma-

tively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

PORTIONS OF TRANSCRIPT OF HEARING OF AUGUST 13, 1973

(1)

Boris Thomas, Plaintiff, vs. Ford Motor Company, a Delaware corporation, and International Union, UAW, a union organization, and Local 600, UAW, a union organization, Defendants.	Civil Action Numbers: 39879 and 40129

Proceedings had and testimony taken in the above-entitled cause before the Honorable John Feikens, United States District Judge, at Detroit, Michigan.

Appearances:

Weiswasser & Barnard
By: Theodore Weiswasser, Esq.
Travelers Tower, Suite 1701
Southfield, Michigan 48076
Appearing on behalf of Plaintiff.

Jordan Rossen, Esq.
8000 East Jefferson
Detroit, Michigan 48214
Appearing on behalf of Defendant UAW.

(1A)

Joseph A. O'Reilly, Esq.
and
James R. Jackson, Esq.
The American Road
Dearborn, Michigan 48121
Appearing on behalf of Defendant Ford Motor Company.

• • • • •

(2) • • • • •

Mr. Weiswasser: Your Honor, Peter [sic] Weiswasser for the plaintiff.

I believe that we're here on an adjournment of this order to show cause, or this motion.

The Court: It's a motion to dismiss, is it not,

Mr. Weiswasser: Yes, sir, it is. In both instances it is a motion to dismiss. It was discussed and argued at some length the last time we were here.

The Court, if I recall, referred it to an adjourned time, in terms of what additional discussion or documentation would be prepared. At this time, I have nothing additional to present to the Court on the (3) Title VII action, which is the later action which was assigned to your Honor.

I would like to address a few additional words to the collective bargaining agreement.

• • • • •

19) The Court: The point I am getting at is that you're satisfied—and this is what I'm really testing with my questions—you're satisfied that you have furnished me with appropriate responses to each of the (20) points that have been raised.

Mr. Weiswasser: Well, the point, in particular, is covered by the exhibits, and it's well covered.

The Court: All right.

Is that true, now, as to the remaining points, also?

Mr. Weiswasser: Well, I believe that the points are covered in our—in responsive fashion in our answer.

The Court: Well, I want to know whether or not you feel you have completely and fully covered these points, and if you have, then what I'll do is take this matter under advisement and decide it.

Anything further, gentlemen?

Mr. O'Reilly: I have nothing further.

The Court: Mr. Rossen?

Mr. Rossen: Only one other comment, • • •

• • • • •

(21) The Court: All right.

Mr. Weiswasser: Thank you, your Honor.

• • • • •

The Court: All right, gentlemen. I'll take this matter under advisement.

PORTIONS OF TRANSCRIPT OF NOVEMBER 1, 1973 CONFERENCE

(3) Detroit, Michigan
Thursday, November 1, 1973

The Court: Let's put this on the record.

Boris Thomas versus the Ford Motor Company and International Union UAW Local 600, Civil Action Numbers 39879 and 40129.

Mr. Weiswasser appears in both cases for the plaintiff.

The International and Local is represented by Mr. Jordan Rossen, and the Ford Motor Company is represented by Joseph O'Reilly and Richard Maloy. (sic)

Then, for the record, Mr. Weiswasser, the plaintiff has no further papers to submit; is that correct?

Mr. Weiswasser: That's correct, sir.

The Court: Does the defendant union have anything further?

Mr. Rossen: No, your Honor.

I might say, in our initial motion, which we briefed, the complaint should be dismissed on the pleadings, we indicated that we would be agreeable, in fact, (4) that the Court

might have to treat this as a motion for summary judgment in the event that it went outside the pleadings.

The Court: I made no disposition of it at that time. That's why I was affording an opportunity—

Mr. Weiswasser: We have nothing else, your Honor.

The Court: Do you, Mr. O'Reilly?

Mr. O'Reilly: No, your Honor.

The Court: Then I will proceed to regard it as a motion under Rule 56 and dispose of it.

All right. Thank you for coming in, and I will issue an opinion shortly.

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